

# Senate Amendment 5192

PAG LIN

1 1 Amend Senate File 2297 as follows:  
1 2 #1. By striking everything after the enacting  
1 3 clause and inserting the following:  
1 4 <Section 1. NEW SECTION. 318.1 DEFINITIONS.  
1 5 As used in this chapter, unless the context  
1 6 otherwise requires:  
1 7 1. "Department" means the state department of  
1 8 transportation.  
1 9 2. "Highway authority" means the county board of  
1 10 supervisors, in the case of secondary roads, and the  
1 11 department, in the case of primary roads.  
1 12 3. "Highway right-of-way" means the total area of  
1 13 land, whether reserved by public ownership or  
1 14 easement, that is reserved for the operation and  
1 15 maintenance of a legally established public roadway.  
1 16 This area shall be deemed to consist of two portions,  
1 17 a central traveled way including the shoulders and  
1 18 that remainder on both sides of the road, between the  
1 19 outside shoulder edges and the outer boundaries of the  
1 20 right-of-way.  
1 21 4. "Obstruction" means an obstacle in the highway  
1 22 right-of-way, or an impediment or hindrance which  
1 23 impedes, opposes, or interferes with free passage  
1 24 along the highway right-of-way not including utility  
1 25 structures installed in accordance with an approved  
1 26 permit.  
1 27 5. "Traveled portion of the right-of-way" means  
1 28 that area of the highway right-of-way, not including  
1 29 the shoulders, on which vehicles normally travel.  
1 30 6. "Utility" means all private, public, municipal,  
1 31 or cooperative owned systems for water, sewer, natural  
1 32 gas, electric, telegraph, telephone, transit,  
1 33 pipeline, heating plants, railroads, bridges, street  
1 34 lights, or traffic control signals.  
1 35 7. "Utility structures" means the aboveground  
1 36 devices, required by a utility, including poles,  
1 37 lines, and wires, used for telephone, electric,  
1 38 natural gas, and other distribution or transmission  
1 39 purposes, and natural gas and electrical substations.  
1 40 Sec. 2. NEW SECTION. 318.2 PURPOSE.  
1 41 The purpose of this chapter is to enhance public  
1 42 safety for those traveling the public roads and allow  
1 43 economical maintenance of highway rights-of-way.  
1 44 Sec. 3. NEW SECTION. 318.3 OBSTRUCTIONS IN  
1 45 HIGHWAY RIGHT-OF-WAY.  
1 46 1. A person shall not place, or cause to be  
1 47 placed, an obstruction within any highway right-of-  
1 48 way. This prohibition includes, but is not limited  
1 49 to, the following actions:  
1 50 a. The excavation, filling, or making of any  
2 1 physical changes to any part of the highway right-of-  
2 2 way, except as provided under section 318.8.  
2 3 b. The cultivation or growing of crops within the  
2 4 highway right-of-way.  
2 5 c. The destruction of plants placed within the  
2 6 highway right-of-way.  
2 7 d. The placing of fences or ditches within the  
2 8 highway right-of-way.  
2 9 e. The alteration of ditches, water breaks, or  
2 10 drainage tiles within the highway right-of-way.  
2 11 f. The placement of trash, litter, debris, waste  
2 12 material, manure, rocks, crops or crop residue, brush,  
2 13 vehicles, machinery, or other items within the highway  
2 14 right-of-way.  
2 15 g. The placement of billboards, signs, or  
2 16 advertising devices within the highway right-of-way.  
2 17 h. The placement of any red reflector, or any  
2 18 object or other device which shall cause the effect of  
2 19 a red reflector on the highway right-of-way which is  
2 20 visible to passing motorists.  
2 21 2. The following actions shall not constitute an  
2 22 obstruction within a highway right-of-way:  
2 23 a. Mowing or harvesting grass within the highway  
2 24 right-of-way so long as the mowing or harvesting does

2 25 not destroy the grass or other plants in the highway  
2 26 right-of-way and is not in violation of an integrated  
2 27 roadside vegetation management plan adopted pursuant  
2 28 to section 314.22.

2 29 b. Any action by, or authorized by, the highway  
2 30 authority or the state of Iowa.

2 31 Sec. 4. NEW SECTION. 318.4 DUTY OF HIGHWAY  
2 32 AUTHORITIES.

2 33 The highway authority shall cause all obstructions  
2 34 in a highway right-of-way under its jurisdiction to be  
2 35 removed. All removals shall be without liability on  
2 36 the part of any officer ordering or effecting such  
2 37 removal.

2 38 Sec. 5. NEW SECTION. 318.5 REMOVAL AND COST.

2 39 1. An obstruction in a highway right-of-way which  
2 40 constitutes an immediate and dangerous hazard shall,  
2 41 without notice or liability in damages, be removed by  
2 42 the highway authority.

2 43 2. An obstruction not constituting an immediate  
2 44 and dangerous hazard shall be removed by the highway  
2 45 authority without liability after forty-eight-hour  
2 46 notice served in the same manner in which an original  
2 47 notice is served, or in writing by certified mail, or  
2 48 in any other manner reasonably calculated to apprise  
2 49 the person responsible for the obstruction that the  
2 50 obstruction will be removed at the person's expense.

3 1 The highway authority shall assess the removal cost.

3 2 3. Upon removal of the obstruction, the highway  
3 3 authority may immediately send a statement of the cost  
3 4 to the person responsible for the obstruction. If  
3 5 within ten days after sending the statement the cost  
3 6 is not paid, the highway authority may institute legal  
3 7 proceedings to collect the cost of removal. The  
3 8 removal costs shall be assessed against the following  
3 9 persons, as applicable:

3 10 a. The vehicle owner in the case of an abandoned  
3 11 vehicle.

3 12 b. The abutting property owner in the case of a  
3 13 fence, other than a right-of-way line fence, or other  
3 14 temporary obstruction placed within the highway right-  
3 15 of-way by the owner or tenant of the abutting  
3 16 property.

3 17 c. The owner or person responsible for placement  
3 18 of any other obstruction.

3 19 Sec. 6. NEW SECTION. 318.6 PUBLIC NUISANCE.

3 20 1. Any person who places, or causes to be placed,  
3 21 any obstruction in a highway right-of-way as  
3 22 prohibited under section 318.3 is deemed to have  
3 23 created a public nuisance punishable as provided in  
3 24 chapter 657.

3 25 2. If a person is found guilty of placing an  
3 26 obstruction within a highway right-of-way, the court  
3 27 may, in addition to any fine imposed, or judgment for  
3 28 damages or costs for which a separate execution may  
3 29 issue, order that the obstruction be abated or removed  
3 30 at the expense of the defendant. The costs for  
3 31 abatement or removal of the obstruction may be entered  
3 32 as a personal judgment against the defendant or  
3 33 assessed against the property where the obstruction  
3 34 occurred, or both.

3 35 Sec. 7. NEW SECTION. 318.7 INJUNCTION TO  
3 36 RESTRAIN OBSTRUCTIONS.

3 37 A highway authority may maintain a suit in equity  
3 38 aided by injunction to restrain an obstruction in a  
3 39 highway right-of-way. In such actions, the highway  
3 40 authority may cause the legal boundary lines of the  
3 41 highway to be adjudicated provided all interested  
3 42 parties are impleaded.

3 43 Sec. 8. NEW SECTION. 318.8 PERMIT REQUIRED.

3 44 A person shall not excavate, fill, or make a  
3 45 physical change within a highway right-of-way without  
3 46 obtaining a permit from the applicable highway  
3 47 authority. At the request of a permittee, a  
3 48 modification may be granted in the discretion of the  
3 49 highway authority. Work performed under the permit  
3 50 shall be performed in conformity with the

4 1 specifications prescribed by the highway authority.  
4 2 If the work does not conform to permit specifications,  
4 3 the person shall be notified to make the conforming  
4 4 changes. If after twenty days the changes have not  
4 5 been made, the highway authority may make the

4 6 necessary changes and immediately send a statement of  
4 7 the cost to the responsible person. If within thirty  
4 8 days after sending the statement the cost is not paid,  
4 9 the highway authority may institute legal proceedings  
4 10 to collect the cost of correction. A violation of the  
4 11 permit specifications shall be considered a violation  
4 12 of section 318.3. A public utility subject to section  
4 13 306A.3 is exempt from this section.

4 14 Sec. 9. NEW SECTION. 318.9 UTILITY STRUCTURES.

4 15 1. a. A utility structure in a highway right-of=  
4 16 way used for telephone, electric, natural gas, or  
4 17 other distribution or transmission purposes shall be  
4 18 removed by the owner or operator of the transmission  
4 19 lines upon written notice from the highway authority  
4 20 of not less than ninety days, to the owner and  
4 21 operator. The notice shall, with reasonable  
4 22 certainty, specify the utility structure to be  
4 23 removed, and shall be served in the same manner that  
4 24 original notices are required to be served. If the  
4 25 owner or operator of the transmission line is unable  
4 26 to remove the utility structure within the required  
4 27 time due to circumstances beyond the control of the  
4 28 owner or operator, the owner or operator shall file a  
4 29 request with the highway authority for an extension of  
4 30 time to complete the work.

4 31 b. If the owner or operator of a transmission line  
4 32 needs authorization from the utilities board or other  
4 33 governmental authority to relocate a utility structure  
4 34 or to obtain a new private easement right for  
4 35 relocation of the utility structure, the owner or  
4 36 operator shall request an extension of time within  
4 37 which to remove the utility structure. The highway  
4 38 authority shall grant an extension of time for at  
4 39 least ninety days following the date authorization is  
4 40 granted or the easement right is obtained.

4 41 2. Upon written application, the highway authority  
4 42 shall locate the construction of new telephone,  
4 43 electric, or transmission lines or parts of lines,  
4 44 including natural gas pipeline, for the roads within  
4 45 the highway authority's jurisdiction, subject to the  
4 46 jurisdiction of the utilities board under chapters  
4 47 476, 478, and 479, as follows:

4 48 a. The county engineer, or the board of  
4 49 supervisors if a county engineer is not available,  
4 50 shall locate the lines for secondary roads.

5 1 b. The department shall locate the lines for  
5 2 primary roads.

5 3 3. The department and the county engineer, or the  
5 4 board of supervisors if a county engineer is not  
5 5 available, may designate the location of a utility  
5 6 structure within a highway right-of-way. A utility  
5 7 structure that is not properly located within the  
5 8 highway right-of-way shall be removed within a time  
5 9 prescribed to a designated location. If not so  
5 10 removed, the highway authority may remove the utility  
5 11 structure and recover costs as provided in section  
5 12 318.5.

5 13 Sec. 10. NEW SECTION. 318.10 FENCES.

5 14 1. A fence which constitutes an immediate and  
5 15 dangerous hazard shall, without notice or liability in  
5 16 damages, be removed by the highway authority. In all  
5 17 other cases where a fence is an obstruction in a  
5 18 highway right-of-way, notice in writing of not less  
5 19 than thirty days shall be given to the owner,  
5 20 occupant, or agent of the land enclosed by the fence.

5 21 2. The notice shall, with reasonable certainty,  
5 22 specify the line to which the fences shall be removed,  
5 23 and shall be served in the same manner that original  
5 24 notices are required to be served, or in writing by  
5 25 certified mail, or in any other manner reasonably  
5 26 calculated to apprise the person responsible for the  
5 27 fence.

5 28 3. The department and the county engineer, or the  
5 29 board of supervisors if a county engineer is not  
5 30 available, may designate the location of a fence  
5 31 within a highway right-of-way. A fence that is not  
5 32 properly located within the highway right-of-way shall  
5 33 be removed within a time prescribed to a designated  
5 34 location. If not so removed, the highway authority  
5 35 may remove the fences and recover costs as provided in  
5 36 section 318.5.

5 37 Sec. 11. NEW SECTION. 318.11 BILLBOARDS AND  
5 38 SIGNS.  
5 39 1. No billboard or advertising sign or device,  
5 40 except a sign or device authorized by law or approved  
5 41 by the highway authority, shall be placed or erected  
5 42 upon a highway right-of-way.  
5 43 2. A billboard or advertising sign, whether on  
5 44 public or private property, that obstructs the view of  
5 45 any portion of a public highway or of a railway track  
5 46 making the use of the traveled portion of the right-  
5 47 of-way dangerous is a public nuisance and shall be  
5 48 abated. The person responsible for the erection and  
5 49 maintenance of the billboard or sign may be punished  
5 50 as provided in chapter 657.  
6 1 Sec. 12. NEW SECTION. 318.12 ENFORCEMENT.  
6 2 A highway authority shall enforce the provisions of  
6 3 this chapter by appropriate civil or criminal  
6 4 proceeding or by both such proceedings.  
6 5 Sec. 13. Section 68A.406, subsection 2, paragraph  
6 6 a, Code Supplement 2005, is amended to read as  
6 7 follows:  
6 8 a. Any property owned by the state or the  
6 9 governing body of a county, city, or other political  
6 10 subdivision of the state, including all property  
6 11 considered the public right-of-way. Upon a  
6 12 determination by the board that a sign has been  
6 13 improperly placed, the sign shall be removed by  
6 14 highway authorities as provided in section ~~319.13~~  
6 15 318.5, or by county or city law enforcement  
6 16 authorities in a manner consistent with section ~~319.13~~  
6 17 318.5.  
6 18 Sec. 14. Section 306.46, subsection 1, Code  
6 19 Supplement 2005, is amended to read as follows:  
6 20 1. A public utility may construct, operate,  
6 21 repair, or maintain its utility facilities within a  
6 22 public road right-of-way. The location of new utility  
6 23 facilities shall comply with section ~~319.5~~ 318.9. A  
6 24 utility facility shall not be constructed or installed  
6 25 in a manner that causes interference with public use  
6 26 of the road.  
6 27 Sec. 15. Section 306C.13, subsection 8, paragraph  
6 28 f, Code 2005, is amended to read as follows:  
6 29 f. Which do not comply with all applicable state  
6 30 or local laws, regulations and ordinances, including  
6 31 but not limited to zoning, building, and sign codes as  
6 32 locally interpreted and applied and enforced, or which  
6 33 violate chapter ~~319~~ 318; however, nothing in this  
6 34 division shall prevent or restrict county or local  
6 35 zoning authorities from making a determination of  
6 36 customary use concerning size, lighting, and spacing  
6 37 of advertising devices in zoned commercial or  
6 38 industrial adjacent areas, and such determinations  
6 39 will be accepted in lieu of the standards of this  
6 40 division. The provisions of this division shall not  
6 41 prevent or restrict county or local zoning authorities  
6 42 within their respective jurisdictions from  
6 43 establishing standards imposing controls stricter than  
6 44 those required by this division.  
6 45 Sec. 16. Section 311.32, Code 2005, is amended to  
6 46 read as follows:  
6 47 311.32 ADMINISTRATION AND MAINTENANCE OF ROADS.  
6 48 Any road established by petition and any road  
6 49 improved by petition under this chapter shall be  
6 50 administered and maintained by the county under  
7 1 chapters 306, 309, 314, 317, and ~~319~~ 318. However,  
7 2 the fact that right-of-way is donated by property  
7 3 owners for the establishment of a road or a portion of  
7 4 the cost of a road improvement is paid by property  
7 5 owners under this chapter, does not preclude the board  
7 6 of supervisors from exercising its responsibility over  
7 7 these roads as secondary roads.  
7 8 Sec. 17. Section 331.362, subsection 7, Code 2005,  
7 9 is amended to read as follows:  
7 10 7. The board shall cause the removal of  
7 11 obstructions on the secondary roads, in accordance  
7 12 with chapter ~~319~~ 318.  
7 13 Sec. 18. Section 331.756, subsection 57, Code  
7 14 Supplement 2005, is amended to read as follows:  
7 15 57. Commence legal proceedings to remove  
7 16 billboards and signs which constitute a public  
7 17 nuisance as provided in section ~~319.11~~ 318.11.

7 18       Sec. 19. Chapter 319, Code 2005, is repealed.>  
7 19 [#2.](#) By renumbering as necessary.  
7 20  
7 21  
7 22 \_\_\_\_\_  
7 23 DICK L. DEARDEN  
7 24 SF 2297.301 81  
7 25 eg/cf/927